LEGISLATIVE SERVICES AGENCY

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Iowa Legislative Interim Calendar and Briefing

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In This Edition

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December 2015

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Monday, December 7, 2015
Health Policy Oversight Committee
10:00 a.m., Room 103, Supreme Court Chamber, Statehouse

Tuesday, December 8, 2015
Administrative Rules Review Committee
9:00 a.m., Room 116, Statehouse

Wednesday, December 9, 2015
Public Retirement Systems Committee
10:00 a.m., Room 103, Supreme Court Chamber, Statehouse

Tax Expenditure Committee
10:00 a.m., Room 22, Statehouse

Thursday, December 10, 2015
Public Retirement Systems Committee
9:30 a.m., Room 103, Supreme Court Chamber, Statehouse

Revenue Estimating Conference
10:00 a.m., Room 116, Statehouse

Friday, December 18, 2015
Telecommunications Company Property Tax Review Committee
9:00 a.m., Room 103, Supreme Court Chamber, Statehouse

Monday, January 11, 2016
Eighty-sixth General Assembly 2016 Regular Session Convenes
10:00 a.m., Senate and House of Representatives Chambers, Statehouse

Health Policy Oversight Committee
Co-chairperson: Senator Amanda Ragan
Co-chairperson: Representative David E. Heaton
Location: Room 103, Supreme Court Chamber, Statehouse
Date & Time: Monday, December 7, 2015, 10:00 a.m.
LSA Contacts: Patty Funaro, Legal Services, (515) 281-3040; Rachele Hjelmaas, Legal Services, (515) 281-8127; Ann Ver Heul, Legal Services, (515) 281-3837.
Tentative Agenda: Presentations from the Department of Human Services and Managed Care Organizations regarding the status of the implementation of Medicaid Managed Care as well as a Public Comment period.
Internet Site: https://www.legis.iowa.gov/committees/committee?ga=86&groupID=24165

Administrative Rules Review Committee
Chairperson: Representative Dawn Pettengill
Vice Chairperson: Senator Wally Horn
Location: Room 116, Statehouse
Date & Time: Tuesday, December 8, 2015, 9:00 a.m.
LSA Contacts: Jack Ewing, Legal Services, (515) 281-6048; Tim Reilly, Legal Services, (515) 725-7354.
Agenda: Published in the Iowa Administrative Bulletin:
https://www.legis.iowa.gov/law/administrativeRules/bulletinSupplementListings
Internet Site: https://www.legis.iowa.gov/committees/committee?endYear=2015&groupID=705

Tax Expenditure Committee
Co-chairperson: Senator Joe Bolkcom
Co-chairperson: Representative Thomas R. Sands
Location: Room 22, Statehouse
Date & Time: Wednesday, December 9, 2015, 10:00 a.m.
LSA Contacts: Mike Mertens, Legal Services, (515) 281-3444; Doug Adkisson, Legal Services, (515) 281-3884; Michael Duster, Legal Services, (515) 281-4800.
Tentative Agenda: Presentations concerning the school tuition organization tax credit, the volunteer fire fighter/volunteer emergency medical services personnel/reserve peace officer tax credit, the solar energy tax credits, the machinery and equipment sales and use tax exemptions, and reporting for tax increment financing.
Internet Site: https://www.legis.iowa.gov/committees/committee?ga=86&groupID=594

Public Retirement Systems Committee
Co-chairperson: Senator Thomas G. Courtney
Co-chairperson: Representative Dawn E. Pettengill
Location: Room 103, Supreme Court Chamber, Statehouse
Dates & Times: Wednesday, December 9, at 10:00 a.m., and Thursday, December 10, 2015, at 9:30 a.m.
LSA Contacts: Ed Cook, Legal Services, (515) 281-3994; Andrew Ward, Legal Services, (515) 725-2251; Richard Nelson, Legal Services, (515) 242-5822.
Agenda: To be announced.
Internet Site: https://www.legis.iowa.gov/committees/committee?endYear=2015&groupID=655

Revenue Estimating Conference
Location: Room 116, Statehouse
Date & Time: Thursday, December 10, 2015, 10:00 a.m.
Contact Persons: Jeff Robinson, LSA Fiscal Services, (515) 281-4614.
Internet Site: https://www.legis.iowa.gov/committees/committee?endYear=2015&groupID=627

Telecommunications Company Property Tax Review Committee
Co-chairperson: Senator Janet Petersen
Co-chairperson: Representative Thomas R. Sands
Location: Room 103, Supreme Court Chamber, Statehouse
Date & Time: Friday, December 18, 2015, 9:00 a.m.
LSA Contacts: Michael Duster, Legal Services, (515) 281-4800; Mike Mertens, Legal Services, (515) 281-3444; Kathy Hanlon, Legal Services, (515) 281-3847.
Agenda: To be announced.
Internet Site: https://www.legis.iowa.gov/committees/committee?ga=86&session=1&groupID=24161

ADMINISTRATIVE RULES REVIEW COMMITTEE

November 10, 2015

Chairperson: Representative Dawn Pettengill
Vice Chairperson: Senator Wally Horn

INSPECTIONS AND APPEALS DEPARTMENT, *General Provisions for Elder Group Homes, Assisted Living Programs, and Adult Day Services*, 10/14/15 IAB, ARC 2200C, NOTICE.

Background. This rulemaking comes after a comprehensive five-year review of the Department of Inspections and Appeals (DIA) administrative rules, resulting in amendments to three chapters. The rulemaking amends rules regarding the submission of blueprints and delayed-egress specialized locking systems. It rescinds rules regarding minimum square footage of common space in new or remodeled buildings and minimum square footage of operable windows in sleeping rooms. The rulemaking amends several definitions, adds a definition of "restraints," and adds a rule stating tenants have a right to be free from restraints. It also makes changes to rules regarding administration of medication, provision of dependent adult abuse training, requirements for dementia-specific programs, involuntary transfers from an assisted living program, updating service plans, nurse review, and policies and procedures related to head injuries and certain sexual relationships.

Commentary. Ms. Susan Cameron, a representative for the Iowa Health Care Association and Iowa Center for Assisted Living, spoke about concerns with two provisions of this rulemaking. First, she suggested that the revised definition of "restraints" should be clarified to exempt "adaptive clothing" from its meaning. Ms. Cameron shared pictures of garments that are considered "adaptive clothing" with the committee and explained that they can be used to protect a tenant's dignity and prevent or delay a tenant's placement in a higher level of care. She provided one example of a resident in a dementia care facility who would remove clothes and urinate throughout the facility. The resident's family requested he wear adaptive clothing and the issue ceased.

Secondly, Ms. Cameron expressed concern about requiring all facilities to have an awake staff member at all times. She stated a preference for the current rule which requires an awake staff 24 hours every day for dementia programs but allows non dementia facilities to make a decision as to whether they will require a staff member to be awake at all times. She mentioned that, in general, all facilities currently have someone awake, but "a few small rural facilities have trouble" with staffing at that level. Several committee members expressed concerns with any facility not having an awake staff member. Ms. Cameron mentioned that at present, facilities make families of residents aware of their staffing levels, including whether they have someone awake at all times.

A committee member asked DIA representative Mr. Dave Werning why the revised "restraints" definition will capture adaptive clothing. Mr. Werning stated that it is a tenant-right issue and that such clothing restricts the resident's freedom of movement. When a committee member opined that the shirt in the photograph did not look particularly restrictive, Mr. Werning stated that it is restrictive in the sense that the tenant could not remove it on his or her own. When asked whether DIA is receptive to the concerns raised, Mr. Werning stated the agency's director is aware of the concern but no decision had been made about changing the rule as written at that time.

Action. No action taken.

RACING AND GAMING COMMISSION, *Iowa Greyhound Pari-Mutuel Racing Fund*, 10/14/15 IAB, ARC 2198C, FILED.

Background. This rulemaking creates a new rule regarding distributions and allocations of funds in the Iowa greyhound pari-mutuel racing fund, created in Iowa Code section 99D.9B. The Racing and Gaming Commission (RGC) received 11 written comments and heard 11 oral comments at its July 29, 2015, public hearing regarding the rule. Several changes were made to the rule to reflect the comments received, including implementing a $1 million ceiling for distributions to any individual. RGC published a revised version of the rule on August 14. Further comments were received about the revised rule, most of which opposed the cap on per-person distributions. RGC further delayed the rulemaking to consider all comments and ultimately made more changes.

The adopted version of the rule sets the percentage of the fund to be distributed based on past racing performances at 70 percent, while qualifying greyhound industry participants will receive 30 percent regardless of purse winnings. Distributions will be made to breeders who whelped and raised the greyhound for the first six months of the dog's life in Iowa. The cap on a hardship case was increased to $100,000. Language regarding the application process was removed from the rule. The cap on individual distribution recipients was raised to $3 million, though RGC could reconsider that cap given certain circumstances.

Commentary. Committee inquiry included whether the wording of the rule is tight enough to properly define dogs or

(Administrative Rules Review Committee continued from Page 4)

kennels based in Iowa, whether this will include dogs that ran at the Council Bluffs racetrack and are no longer racing or any dog that raced in Iowa, and why there should be an individual cap if the intent is to distribute all the money in the fund. RGC representative Mr. Brian Ohorilko replied that the cap was implemented because the majority of interested people wanted one.

Further, RGC was asked whether they have an idea of who will be impacted by the cap. Mr. Ohorilko stated the cap was first set at $1 millon but was raised after receiving comments. About two dozen breeders would have been affected by the $1 million cap, whereas about five will be now.

Action. No action taken.

ENVIRONMENTAL PROTECTION COMMISSION, *Application Fees for Construction and Operation of Air Pollution Emitting Equipment; Fees for Asbestos Notifications*, 10/28/15 IAB, ARC 2222C, NOTICE.

Background. This rulemaking amends existing rules to establish application fees for construction and operation of air pollution emitting equipment and fees for asbestos notifications. The rules adjust various fees related to applications and permits. The Environmental Protection Commission (EPC) anticipates the amended rules will improve response time for air quality construction permit applications and issuance rates for Title V operating permits. The proposed changes will apply to industries when adding new or modifying existing equipment that emits regulated air pollutants and to industries required to obtain a Title V operating permit.

EPC representative Mr. Jim McGraw noted that EPC plans to file this rule under the "emergency" procedures after notice, making it effective January 15, 2016.

Commentary. Ms. Nicole Crain, on behalf of the Iowa Association of Business and Industry (ABI), noted that this rulemaking is a substantial change to how fees have been collected by EPC. Ms. Crain emphasized that there is a great importance to getting this process correct, which is likely why the rulemaking process for these rules took longer than EPC had anticipated. Ms. Crain noted that some of ABI's member businesses would benefit from flat fee rates while others would prefer an hourly fee approach. The "bottom line" is that businesses will be paying more under these amended rules. Ms. Crain also voiced a concern for funding sustainability regarding Title V, because as companies pollute less, funding will decrease. She added that while this rulemaking may not be perfect, it is a move in the right direction.

Committee discussion included whether this rulemaking makes the regulatory process more complicated, thus making it more expensive. Ms. Crain replied that may not necessarily be the case. Currently, smaller companies often hire consultants to help them manage the regulatory requirements or assist with the permit-writing process. Mr. McGraw added that costs typically increase by about 1.9 percent per year, and that these amended rules will shift the burden from larger companies who simply pollute more to those who require EPC's services.

Action. No action taken.

EDUCATION DEPARTMENT, *Intensive Summer Literacy Programs*, 10/14/15 IAB, ARC 2186C, NOTICE.

Background. This proposed rule establishes criteria and guidelines for implementation of intensive summer literacy programs by school districts as required by Iowa Code section 279.68. The criteria and guidelines are based on the work and recommendations of a task team convened by the Iowa Reading Research Center established pursuant to Iowa Code section 256.9(53)(c). The rule includes criteria for instructional practices or programs, instructor qualifications, instruction time, class and group size, student attendance, program evaluation, successful program completion, and program leadership and administration. The rules will begin to apply in the 2016-2017 school year and the summer thereafter.

Commentary. Department representative Mr. Phil Wise and other department representatives explained that these proposed rules implement the intensive summer literacy programs that were part of the third grade retention initiative enacted in 2012 Iowa Acts, SF 2284. The representatives explained the process by which the criteria in the rules were developed and summarized the extensive public comments received by the department. Some of the comments specifically opposed third grade retention, others argued that the criteria are too onerous, and still others argued that the criteria should be made more rigorous, with particular attention paid to responding to students with dyslexia. The representatives noted that the third grade retention requirement could only be eliminated by statute, not by rule.

In response to questions from committee members, the representatives explained that the rule's 90 percent attendance requirement is based on attendance levels typical across Iowa, that districts will have discretion as to how to allocate the required 75 hours over the summer, that the third grade retention requirement will not apply to students who

(Administrative Rules Review Committee continued from Page 5)

move to Iowa after the third grade, that students who complete a program will continue to receive assistance going forward, that a student can leave a program early once proficiency is demonstrated, and that no online-only options are currently available for these programs, although some include online components. Committee members also questioned whether the attendance requirements could lead to litigation by retained students and urged the department to consider a waiver process for school districts for which the 15-student class size requirement may be a burden.

Public comment was heard from Ms. Katie Greving on behalf of the Iowa chapter of Decoding Dyslexia. She shared information about dyslexia and argued that the six specific programs currently approved by the department for use by schools are not age appropriate for third graders and are not effective in responding to dyslexia. She also sought additional training requirements for the program teachers and more specific program requirements.

Public comment was also heard from Ms. Margaret Buckton on behalf of the Urban Education Network of Iowa and Rural School Advocates of Iowa. She expressed concern that the cumulative effect of all of the criteria set out in the rule is to create a standard that no program can actually meet. She suggested that the criteria could be changed to goals instead of requirements. She also stated that rural school districts could face particular burdens in implementing these programs due to the costs of transporting students and the class size requirement. She also hoped that districts' categorical funding could be used for the costs of compliance with this rule.

Department representatives stated that this notice would not be adopted at the Board of Education's November 18 meeting to allow time for further work on it and that the department will be approving additional programs for use by schools beyond the six previously discussed.

Action. No action taken.

EDUCATION DEPARTMENT, *Smarter Balanced Assessments*, 10/14/15 IAB, ARC 2185C, NOTICE.

Background. This proposed rule provides that at least one of the districtwide assessments used to measure student progress in core academic indicators in reading and math shall be the assessment developed by the Smarter Balanced Assessment Consortium (SBAC). The rule provides that the department shall select a statewide vendor to administer SBAC through a request-for-proposals process.

Iowa Code section 256.7(21)(b)(3) required the director of the department to establish an assessment task force to review and make recommendations for a statewide assessment of student progress on core academic indicators. Such an assessment is required pursuant to Iowa Code section 256.7(21)(b)(2). On December 31, 2014, the task force recommended the assessment developed by SBAC, which was one of two finalists along with the Next Generation Iowa Assessments:

https://www.educateiowa.gov/sites/files/ed/documents/2014-12-31AssessmentTaskForceReport.pdf

The rule requires the task force to review SBAC administration and make a further recommendation pursuant to Iowa Code section 256.7(21)(b)(3) on or before June 30, 2020.

The SBAC assessment will be used starting with the 2016-2017 school year.

Commentary. Mr. Wise explained the legislative history behind this proposed rule as well as the work by the department's assessment task force that selected the SBAC assessment.

Committee members questioned whether the department has the statutory authority under Iowa Code section 256.7(21)(b) to select a new assessment without prior legislative approval, and Mr. Wise responded that the department had concluded that, when the statute is examined as a whole, the department does have such authority. Mr. Wise stated that the chairs of the Senate and House Education Committees agreed with that conclusion and that the department had waited two years before selecting an assessment to allow the General Assembly time to take further action on this matter.

Committee members asked what specific academic standards would be assessed, and Mr. Wise explained that the assessment would cover the Iowa core standards adopted by the department, not the national common core standards, although the terminology used in statute is not always consistent.

Committee members asked if schools will be able to meet the technological requirements of the assessments, which include computer adaptive components, and Mr. Wise explained that the department has been conducting pilot assessments and working with districts to ensure they will be ready to administer the assessments. He also noted that there will be a paper version of the assessments for the first three years.

(Administrative Rules Review Committee continued from Page 6)

Additional discussion included new academic standards for science for the 2016-2017 school year currently being worked on by the same task force; the membership of the SBAC, which Iowa withdrew from in 2014; student privacy, which Mr. Wise said is carefully protected; the costs of the assessments, which will be borne by school districts; and the department's ability to tailor the assessments to Iowa's academic standards by omitting questions.

Mr. Wise also noted that anyone can take a practice test online: http://www.smarterbalanced.org/practice-test/

The committee heard public comments from representatives of the Iowa Association of School Boards, members of the assessment task force, and others in support of the rules. Ms. Buckton, speaking on behalf of the Urban Education Network of Iowa and Rural School Advocates of Iowa, expressed support for the rules, but also expressed concern about the ability of some schools to meet the technological requirements of the assessments, noting that the paper version of the assessments would not include the computer adaptive component. She also expressed her hope that adequate funding would be provided for schools to administer these assessments, so that the new testing requirements do not become an unfunded mandate on school districts. She additionally noted that the increased rigor of the SBAC assessments might cause a decrease in student scores.

Action. No action taken.

Next Meeting. The next committee meeting will be held in Statehouse Room 116, on Tuesday, December 8, 2015, beginning at 9:00 a.m.

Secretary ex officio: Stephanie Hoff, Administrative Code Editor, (515) 281-3355.

LSA Staff: Jack Ewing, Legal Services, (515) 281-6048; Tim Reilly, Legal Services, (515) 725-7354.

Internet Site: https://www.legis.iowa.gov/committees/committee?endYear=2015&groupID=705

LEGISLATIVE TAX EXPENDITURE COMMITTEE

November 18, 2015

Co-chairperson: Senator Joe Bolkcom
Co-chairperson: Representative Tom Sands

Overview. In 2010, Iowa Acts, ch. 1138 (SF2380), established the Legislative Tax Expenditure Committee under Iowa Code §§2.45(5) and 2.48. The committee is required to conduct regular reviews of all tax credit, withholding credit, and revenue division programs. The committee may review any tax expenditure at any time but is required to review specific tax expenditures during specified years. In 2015, the committee is required to review the agricultural assets transfer tax credit, the custom farming contract tax credit, the claim of right tax credit, the S corporation apportionment tax credit, the Iowa alternative minimum tax credit, the assistive device corporate tax credit, the charitable conservation contribution tax credit, the fuel tax credit, and the new jobs tax credit.

Overview of Franchise Tax and Moneys and Credits Tax. Dr. Amy Rehder Harris, Administrator and Chief Economist, Tax Research and Program Analysis Section, Iowa Department of Revenue (IDR) presented an overview of the franchise tax imposed on financial institutions and the moneys and credits tax imposed on credit unions. The franchise tax is imposed at a flat rate of 5 percent on the "net income" of financial institutions in Iowa. Net income is measured similarly to the corporation income tax, with one notable difference being that the franchise tax net income includes earnings on all government securities. S corporations are subject to the franchise tax at the entity level, but Iowa provides a franchise tax credit to shareholders to avoid double taxation. There are 13 tax credits available against the franchise tax.

The moneys and credits tax is imposed on credit unions at the rate of one-half cent on each dollar of a credit union's required legal and special reserves less an annual $40,000 exemption amount. The tax is imposed by the county board of supervisors and collected by the county treasurer. Proceeds are shared between cities, counties, and the state according to a statutory formula and depending on the location of the credit union. There are nine tax credits available against the moneys and credits tax.

Dr. Harris provided a hypothetical comparison of the two taxes and provided data on the number of entities paying the taxes, annual tax revenues, and tax credit claims by amount and type.

(Legislative Tax Expenditure Committee continued from Page 7)

Agricultural Assets Transfer Tax Credit and Custom Farming Contract Tax Credit. Ms. Lori Beary, Community Development Director, Iowa Finance Authority (IFA), provided background information on the agricultural assets transfer tax credit and the custom farming contract tax credit, which together comprise the Beginning Farmer Tax Credit Program administered the Iowa Agricultural Development Authority (IADA), a division of IFA. Both credits are nonrefundable but may be carried forward for up to 10 years. IFA may not issue more than $12 million in total credits each year under the program, and may not issue more than $50,000 per taxpayer, per credit.

The agricultural assets transfer tax credit is available to owners of agricultural assets (land, equipment, breeding livestock) who lease those assets to qualified beginning farmers. Ms. Beary outlined the age, residency, ownership, training, net worth, and other requirements to qualify as a beginning farmer under the credit, and the requirements for a lease to qualify under the credit. The credit equals 7 percent for a lease made on a cash basis and 17 percent for a lease made on a crop share basis, with an additional percentage point available if the beginning farmer is a military veteran. Ms. Beary explained how the tax credit is calculated for both a cash rent lease and a crop share lease.

The custom farming contract tax credit was enacted in 2013 for landowners who hire beginning farmers for custom work. The credit equals 7 percent of the amount paid on the contract, with an additional percentage point available if the beginning farmer is a military veteran. Ms. Beary outlined the requirements that the landowner, beginning farmer, and contract must satisfy in order to qualify for the credit.

Ms. Beary provided data on the total number of tax credit certificates and tax credit amounts issued under the Beginning Farmer Tax Credit Program. Additionally, she explained the 2015 marketing efforts undertaken by IFA in relation to the program, including attendance at certain workshops and conferences, and the placement of advertisements in certain publications.

Dr. Anthony Girardi, Senior Fiscal Policy Analyst, Tax Research and Program Analysis Section, IDR, provided background information on the Beginning Farmer Tax Credit Program, including recent legislative changes, eligibility for both credits under the program, and similar state and federal tax incentive programs. Dr. Girardi compared beginning farmers and established farmers on a range of topics including farm type, farm production, federal payments received, farm income, major occupation, length of experience, age, and farm net worth. He provided data on tax credit awards and claims by year for each tax credit and for the entire Beginning Farmer Tax Credit Program. Additionally, Dr. Girardi analyzed projects (leases and contracts) under the program per beginning farmer and per land owner, and also analyzed agricultural assets transfer tax credit leases by county and acre, as a percentage of harvested cropland per county, and as a percentage of tenant-operated acres by county. He also provided data on annual agricultural asset transfer tax credit lease income, and data to demonstrate how tax credit amounts are related to crop yields and prices. Finally, the three different types of agricultural asset transfer tax credit leases (cash rent, crop share, hybrid) were analyzed according to number, acreage, and percentage by county.

Charitable Conservation Contribution Tax Credit. Mr. John Good, Fiscal Policy Analyst, Tax Research and Program Analysis Section, IDR, presented a report on the charitable conservation contribution (CCC) tax credit available against the individual and corporate income tax for certain qualifying contributions to conservation organizations in the form of conservation easements, bargain sales of land, or easement bargain sales. The credit is equal to 50 percent of the fair market value of the qualifying donated property, not to exceed $100,000 per taxpayer, per contribution. The tax credit is nonrefundable and nontransferable, but may be carried forward for up to 20 years. Amounts not qualifying for the tax credit may be claimed as an itemized charitable deduction. Mr. Good compared Iowa's CCC tax credit to similar CCC tax credits in other states and to similar federal tax incentives. He also provided data on donations by county and donee organization. The tax credits were analyzed according to year, household adjusted gross income, claimant's age and residency, number, amount, and the timing of the claims. Mr. Good further analyzed the tax credit's cost to the state of Iowa and its usage in relation to all similar donations. Finally, Mr. Good discussed some conclusions from his analysis, notably that donations are clustered in geologically significant areas of the state, that claimants tend to be older, higher income individuals, that over 80 percent of claimants are Iowa residents, and that the 20-year carryforward appears to be sufficient for most claimants to fully utilize the credit.

New Jobs Tax Credit. Mr. Zhong Jin, Senior Fiscal Policy Analyst, Tax Research and Program Analysis Section, IDR, presented background information and statistical analysis on the new jobs tax credit. The new jobs tax credit was originally enacted in 1985 and is available against the individual or corporate income tax for taxpayers who enter into an Industrial New Jobs Training Program contract with an Iowa community college and who create jobs above a cer-

(Legislative Tax Expenditure Committee continued from Page 8)

tain base employment level. The tax credit equals 6 percent of the taxable wages of each created job, not to exceed the qualifying taxable wage for unemployment purposes ($27,300 in 2015). The tax credit is nonrefundable and nontransferable but may be carried forward for up to 10 years. Mr. Jin analyzed the number and amount of tax credit claims by tax year and tax type, and compared the new jobs tax credit claims to investment tax credit claims. The investment tax credit is a different tax credit available under the High Quality Jobs Program, which is a highly utilized job creation program administered by the Economic Development Authority (EDA).

Mr. Jin used data gathered from the Industrial New Jobs Training Program database maintained by EDA to categorize tax credits according to their association with each community college and the industry within which each claiming business operates. He used this database and Iowa Workforce Development unemployment insurance payment data to present three different estimates of jobs created from the new jobs tax credit. Mr. Jin compared business growth rates of Industrial New Jobs Training Program participants with and without new jobs tax credit claims. Finally, he highlighted that on average only one-third of businesses eligible to claim the new jobs tax credit actually do so.

Mr. Tim Whipple, General Counsel, EDA, spoke briefly on the new jobs tax credit and EDA's relationship to the credit. EDA neither awards new jobs tax credits nor administers the associated Industrial New Jobs Training Program, but it does play a limited role in reviewing the program. Mr. Whipple expressed support for a legislative review of the new jobs tax credit, especially given its 30-year existence, and stressed that such a review should be done in the context of all the state's current job creation programs. He noted that in recent years many tax incentives for job creation have been consolidated within EDA in an effort to increase effectiveness and efficiency, and reduce duplication.

Assistive Device Corporate Tax Credit. Mr. Whipple additionally provided a brief background of the assistive device corporate tax credit, which is equal to 50 percent of the first $5,000 expended by a corporation for obtaining assistive device technology to aid an employee who is an individual with a disability. The tax credit is awarded by EDA. Mr. Whipple noted that the tax credit was originally available under both the individual and corporate income taxes. Both credits were repealed by the General Assembly in 2009 (see 2009 Iowa Acts, ch. 179, §§134, 151), but the Governor item vetoed the repeal of the corporate tax credit. Mr. Whipple stated that the corporate tax credit has never been claimed.

Iowa Alternative Minimum Tax Credit. Ms. Angela Gullickson, Senior Fiscal Policy Analyst, Tax Research and Program Analysis Section, IDR, presented a report on the Iowa alternative minimum tax (AMT) credit available against individual, corporate, and franchise taxes, and equal to the amount of Iowa AMT paid by the taxpayer in previous years. In order to claim the AMT credit the taxpayer must not owe AMT in that same tax year. The AMT credit is nonrefundable and may be carried forward indefinitely. Ms. Gullickson gave a brief background of the Iowa AMT and the federal AMT and AMT credit and then reviewed how the AMT and AMT credit is imposed or offered in other states. She also analyzed the amounts of AMT paid and AMT credits claimed by year and tax type, and categorized the percentage of total individual taxpayers paying AMT or claiming the AMT credit by adjusted gross income.

Claim of Right Tax Credit. Ms. Gullickson additionally presented a report on the claim of right tax credit, available to individual taxpayers who are required to repay income in the current tax year that was reported and taxed on a prior Iowa tax return. The credit is equal to the amount of tax paid on the repaid income and is refundable and nontransferable. Alternatively, a taxpayer may deduct the repaid income from Iowa net income. Ms. Gullickson provided background on the federal claim of right tax credit and similar tax credits in other states. She analyzed the tax credit and alternative tax deduction according to year, number of claims, amount claimed, and average claim.

S Corporation Apportionment Tax Credit. Dr. Harris presented a report on the S corporation apportionment tax credit available to individual taxpayers who are shareholders of an S corporation that conducts business in Iowa and other states. In lieu of including all the S corporation income in net income and then claiming the out-of-state tax credit for taxes paid on that income to other states, S corporation shareholders may apportion the relevant income in the same manner as C corporations do under the corporation income tax. The S corporation apportionment tax credit equals the amount of total income tax attributable to S corporation income earned outside of Iowa.

Dr. Harris outlined some of the benefits of the S corporation apportionment tax credit and discussed how other states apportion income from pass-through business entities. She provided data by year on the number of tax credit claims made, the total amount of tax credits available and claimed, the average tax credit claim, and the percentage of available tax credits claimed. She also provided data on the household adjusted gross income distribution for all taxpayers versus claimants of the S corporation apportionment tax credit.

(Legislative Tax Expenditure Committee continued from Page 9)

Fuel Tax Credit. Ms. Gullickson provided a report on the fuel tax credit available against the individual and income taxes equal to the amount of Iowa fuel tax paid relating to purchases for tax-exempt off-road uses. The tax credit is refundable and nontransferable. Ms. Gullickson examined how neighboring states handle the overpayment of fuel taxes, described the requirements for claiming the tax credit and the manner in which it is claimed, and provided data by year on the number of fuel tax credit claims, the total amount of fuel tax credits claimed, and the average fuel tax credit claim.

Committee Discussion and Public Comment. The committee briefly discussed the presentations made during the meeting. During the public comment period, several members of the public from both the banking community and the credit union community expressed views on the franchise tax and the moneys and credits tax, including but not limited to views on the differences between the two taxes. A member of the conservation community also addressed the committee to voice support for the charitable conservation contribution tax credit.

LSA Contacts: Mike Mertens, Legal Services, (515) 281-3444; Doug Adkisson, Legal Services, (515) 281-3884; Michael Duster, Legal Services, (515) 281-4800.
Internet Site: https://www.legis.iowa.gov/committees/committee?ga=86&groupID=594

LEGAL UPDATES

Purpose. Legal update briefings are prepared by the nonpartisan Legal Services Division of the Legislative Services Agency. A legal update briefing is intended to inform legislators, legislative staff, and other interested persons of legislative issues that are the subject of state court and federal district court decisions and regulatory actions, United States Supreme Court decisions, and Attorney General Opinions, including issues involving the constitutionality and interpretation of statutes adopted by the General Assembly. Although a briefing may identify issues for consideration by the General Assembly, it should not be interpreted as advocating any particular course of action.

LEGAL UPDATE—SPEECH AND PERSONAL SOLICITATIONS IN JUDICIAL ELECTIONS

Filed by the United States Supreme Court
April 29, 2015

Williams-Yulee v. Florida Bar

No. 13-1499, 575 U.S. ___ (2015)

http://www.supremecourt.gov/opinions/14pdf/13-1499_d18e.pdf

Factual Background. In September 2009, Lanell Williams-Yulee (Yulee) filed required forms and oaths to qualify to run for a seat on the county court for Hillsborough County, Florida. After filing, she composed and signed a letter announcing her candidacy for the office of county court judge and mailed copies to county voters. In the letter, Yulee also stated that:

> An early contribution of $25, $50, $100, $250, or $500, made payable to 'Lanell Williams–Yulee Campaign for County Judge,' will help raise the initial funds needed to launch the campaign and get our message out to the public. I ask for your support [i]n meeting the primary election fund raiser goals. Thank you in advance for your support.

Yulee eventually lost the primary election to the incumbent judge.

Procedural Background. Following Yulee's defeat, the Florida Bar Association (Bar) filed a complaint against her for violating a rule of the Rules Regulating the Bar, requiring that judicial candidates comply with certain provisions of the Florida Code of Judicial Conduct. Under Canon 7C(1) of the Florida Code of Judicial Conduct, a candidate for a judicial office is prohibited from personally soliciting campaign funds. Yulee contested the complaint on the basis that the Bar could not discipline her for writing and distributing the campaign letter, which included her personal solicitation for campaign contributions, arguing that the First Amendment protects a judicial candidate's right to solicit campaign funds in an election.

A referee, appointed by the Florida Supreme Court to hear the complaint, recommended a finding of guilt against Yulee, issuing of a public reprimand against her, and charging her with the costs of the proceedings. The Florida Supreme Court adopted the referee's recommendation, finding that the prohibition against personal solicitation furthered the state's compelling interest in preserving the integrity of the state judiciary and in maintaining the public's confidence in the impartiality of the judicial branch. The Florida Supreme Court also found that the regulation was narrowly tailored to serve that compelling state interest. The United States Supreme Court (Court) granted certiorari.

Issue. Whether a regulation that prohibits judicial candidates from personally soliciting campaign contributions in judicial elections violates the free speech protections of the First Amendment.

Holding. The Court held that Florida's regulations prohibiting candidates from personally soliciting campaign contributions in judicial elections does not violate the free speech protections of the First Amendment.

Majority Opinion by Chief Justice Roberts. The majority opinion, authored by Chief Justice Roberts and joined by Justices Breyer, Sotomayor, and Kagan, and joined in part by Justice Ginsburg, affirmed the decision of the Florida Supreme Court, holding that judicial candidates "have a First Amendment Right to speak in support of their campaigns. States have a compelling interest in preserving public confidence in their judiciaries. When the State adopts a narrowly tailored restriction like the one at issue here, those principles do not conflict." The majority upheld Florida's First Amendment restrictions for judicial candidates under the same strict scrutiny standard adopted by the Florida Supreme Court, and rejected an argument from the Bar to adopt the closely drawn standard, maintained in other areas of campaign finance jurisprudence since *Buckley v. Valeo*, 424 U.S. 1, 25 (1976). In support of the regulations at issue in Yulee, the Court stated that it is intuitively understood that Florida's interest in maintaining public confidence in judicial integrity, neutrality, and independence would be undermined by judicial candidates asking for favors or attempting to

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"supplicate" campaign donors.

All justices in the majority agreed that a state's interest in preserving public confidence in its judiciary extends beyond the state's interest in preventing the appearance of corruption in the legislative and executive branches. The Court stated that "[p]oliticians are expected to be appropriately responsive to the preferences of their supporters," but noted that the same is not true of judges.

After establishing the state's compelling interest in maintaining the speech restriction in this case, the Court rejected arguments related to the tailoring of Florida's restrictions on judicial candidate speech. The Court held that the restriction was not underinclusive, finding that the solicitation ban "aims squarely at the conduct most likely to undermine public confidence in the integrity of the judiciary: personal requests for money by judges and judicial candidates," and that the restriction advances that objective. The Court further held that the personal solicitation restriction was not overinclusive and that the restrictions accomplish the State's objective through the least restrictive means. The Court stated that "banning all personal solicitations by judicial candidates is narrowly tailored" to address the concern that any personal solicitation by such a candidate would create a public appearance that undermines public confidence in the integrity of the judiciary.

Concurrence by Justice Breyer. Justice Breyer filed a separate concurrence to note his view that the Court's doctrine referring to tiers of scrutiny should serve as guidelines in analyzing the case, and should not be applied mechanically by the Court.

Concurrence by Justice Ginsburg. Justice Ginsburg filed a concurring opinion in which she stated that she would not apply an exacting scrutiny analysis to a state restricting the speech of candidates for judicial office when those regulations sensibly differentiate between candidates for political and judicial offices. Justice Ginsburg noted that states should have substantial latitude to enact campaign finance rules relating to judicial elections. After discussing the role and influence of issue-oriented organizations and political organizations in Iowa's 2010 judicial retention election, she noted that "[d]isproportionate spending to influence court judgments threatens both the appearance and actuality of judicial independence." Justice Ginsburg also opined that a state's decision to elect its judges does not require it to tolerate these risks.

Dissent by Justice Scalia. Justice Scalia filed a dissent, joined by Justice Thomas, in which he stated the general rule that the state "has no power to ban speech on the basis of its content" and noted that "this principle does not grow weaker merely because the censored speech is a judicial candidate's request for a campaign contribution." He further noted the short history of state restrictions relating to personal solicitations by judicial candidates, and highlighted prior Court decisions holding that speech enjoys the full protections of the First Amendment unless there is a widespread and longstanding tradition that ratifies its regulation.

Justice Scalia adopted the same strict scrutiny standard adopted by the majority, and accepted the majority's assertions that states have a compelling interest in maintaining the appearance of judicial impartiality and that a state's interest in regulating judicial elections is different than its interest in regulating political elections. Justice Scalia, however, found that the Florida restriction does not narrowly target concerns about impartiality. He noted that Florida's restriction against mass-mailings and other campaign solicitations do not also restrict judicial candidates from sending notes to thank donors for their contributions, undermining the state's assertion of its interest.

Justice Scalia advanced additional criticisms of the Court's opinion by finding that Florida restriction do not substantially advance its objectives, by finding that the state could use less restrictive means to achieve its objective, and by critiquing the Court's analyses on the issues of underinclusivity and overinclusivity. He concluded that "[t]he First Amendment is not abridged for the benefit of the Brotherhood of the Robe."

Dissent by Justice Kennedy. Justice Kennedy filed a separate dissent in which he agreed with the explanations and principles expounded upon in Justice Scalia's dissent. Justice Kennedy's separate dissent was authored to "underscore the irony that the very First Amendment protections judges must enforce should be lessened when a judicial candidate's own speech is at issue." In his opinion, Justice Kennedy noted that modern communication technologies allow for more robust campaign disclosure requirement systems that offer a speech-enhancing method of deterring corruption, that information from such disclosures relating to contributions and solicitations could have proven instructive to the electorate, and that "[j]udicial elections, no less than other elections, presuppose faith in democracy."

Dissent by Justice Alito. Justice Alito filed a separate dissent in which he agreed with the dissents filed by Justice

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Scalia and Justice Kennedy. Justice Alito's separate dissent, however, posited a more direct criticism of the Court's application of the strict scrutiny standard. He opined that if the Florida restriction "can be characterized as narrowly tailored, then narrow tailoring has no meaning, and strict scrutiny, which is essential to the protection of free speech, is seriously impaired."

Impact on Iowa. Judges and Justices of Iowa's judicial branch are not subject to direct election to the bench, but are subject instead to retention votes following a merit selection process. Similar to the Florida Canon at issue in this case, Rule 51:4.1(A)(4) of the Iowa Code of Judicial Conduct prohibits a judge or judicial candidate from soliciting funds for, paying an assessment to, or making a contribution to a political organization, a candidate for judicial retention, or a candidate for public office. The Court's decision in Yulee does nothing to invalidate that rule. The Court's opinion also differentiates between restrictions on speech in the context of elections, including retention elections, judicial and political elections, respectively, and supports upholding broader restrictions of speech within the context of judicial elections.

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LEGAL UPDATE—CAPITAL GAIN DEDUCTION FROM INDIVIDUAL INCOME TAX

Filed by the Iowa Court of Appeals
September 10, 2015

George M. Lance and Phyllis J. Lance v. Iowa State Board of Tax Review

No. 14-1144

http://www.iowacourts.gov/About_the_Courts/Court_of_Appeals/Court_of_Appeals_Opinions/Recent_Opinions/20150910/14-1144.pdf

Background Facts and Prior Proceedings. George and Phyllis Lance (taxpayers) bought a rental house in 1981 that they personally managed until 1994. In that year, the taxpayers contracted with a property management company for the day-to-day management of the property, but the taxpayers continued to perform some activities such as pay bills, perform some maintenance, inspect the property, oversee major repairs, interface with city inspectors, and approve major expenditures. The taxpayers kept records of the bills paid but did not keep contemporaneous calendar, time, or activity logs. In 2005, the taxpayers sold the property and deducted the resulting capital gains from their Iowa individual income tax pursuant to Iowa Code section 422.7(21).

Iowa Code section 422.7(21) provides, in relevant part, that capital gains from the sale of real property used in a business may be deducted if the taxpayer: 1) held the property for a minimum of 10 years and 2) materially participated for 10 years in the business. "Material participation" is defined under the Internal Revenue Code (IRC). The Department of Revenue (Department), has through administrative rule, interpreted material participation to mean that the taxpayer must materially participate in the business for the 10-year period immediately preceding the sale.

The Department disallowed the capital gains deduction because the taxpayers did not materially participate in the business of managing the rental house for the 10-year period immediately preceding the sale. Upon protest, the taxpayers argued that the Department's administrative rule interpretation of Iowa Code section 422.7(21) is contrary to statute, but also argued that they nonetheless satisfied that rule. An administrative law judge issued a proposed decision in favor of the taxpayers, but the Director of Revenue disagreed and reversed. The taxpayers appealed the Director's decision to the State Board of Tax Review and subsequently to the district court, both of which affirmed the decision of the Director of Revenue. The taxpayers filed this appeal.

Issues. Whether the Department's administrative rule correctly interpreted the 10-year material participation requirement of Iowa Code section 422.7(21), and whether the taxpayers satisfied that requirement.

Analysis. The Iowa Court of Appeals (Court) first considered the statutory interpretation question. The taxpayers argued that the statutory language "materially participated for 10 years" is clear and unambiguous and simply requires a taxpayer to materially participate in the business for any 10-year period coinciding with ownership, not necessarily the 10-year period immediately preceding the sale of the property as required by the Department's administrative rule. Thus, the Department's interpretation should not be entitled to any deference. The Department argued that the lan-

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guage is not clear and unambiguous and that it has been vested with authority to interpret the statute and thus should be afforded deference in its interpretation.

The Court acknowledged that the Iowa Supreme Court has on several occasions held that Iowa Code section 422.68 vests the Department with the authority to interpret Iowa Code chapter 422 (income and franchise taxes) and, as a result, the Department's interpretation will be given deference and only reversed if it is "irrational, illogical, or wholly unjustifiable." The Court accepted the Department's interpretation of the statute for several reasons. First, the statute was sufficiently ambiguous and did not, on its face, preclude the Department's interpretation. Second, the Department's interpretation is in harmony with the IRC definition of "material participation." Third, tax exemptions are historically strictly construed against the taxpayer and liberally in favor of the Department. Fourth, the Legislature has acquiesced to the Department's interpretation of the statute because no countermanding legislative action has been taken since the administrative rule was adopted in 1990.

Having determined that the Department's administrative rule interpretation was valid, the Court then quickly disposed of the material participation question. The Department had previously concluded that the taxpayers' evidence of the number of hours worked over the last 10 years contained large revisions and guestimates, and therefore was not credible or a reasonable means to prove material participation under the IRC. The Department had also determined that most of the taxpayers' activities over the last 10 years were "investor-type activities" that do not support material participation under the IRC. The Court held that the Department's findings were supported by substantial evidence.

Holding. The Department's administrative rule interpreting the capital gains deduction for real property used in a business in Iowa Code section 422.7(21) to require material participation in the business for the 10-year period immediately preceding the sale is valid, and in this case the taxpayer's activities did not satisfy that requirement.

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